Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM APRIL 1, 1969

THROUGH JUNE 30, 1969

VOLUME 135

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

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ALABAMA

For the Period

From April 1, 1969

Through June 30, 1969

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1969 through June 30, 1969, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION
Attorney General

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Executive Assistant

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Deputy Attorney General

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Mrs. Mary Lee Stapp
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James W. Webb

Finance:
James R. Solomon, Jr.

Agriculture and Industries:
George O. Miller

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Jamie L. Pettigrew

OPINIONS

April 18, 1969

Honorable Mabel S. Amos
Secretary of State
State Capitol

Montgomery, Alabama 36104
Secretary of State—Judges of Probate—Uniform Commercial Code.

1. Where an original financing statement is sought to be amended by changing the name under which the original debtor conducted his business, such change may be accomplished in the following manner (we do not rule out the possibility that there may be other methods of accomplishing the same result): By filing a UCC-3 with an "x" marked in box 8 designating an amendment, with a description of such amendment being set out in box 10, and with the name and signature of the debtor as changed by the amendment. Such amendment must otherwise meet the minimum requirements set out in Section 9-402 UCC.

2. To the extent that it conflicts with the above syllabus, the statement contained on page 15 under the heading of amendments in the pamphlet issued by the Secretary of State dealing with procedure and forms for filing in such office or with the Judges of Probate is not a correct guide and should be disregarded.

Opinion by Assistant Attorneys General Hart and Loeb.

Dear Mrs. Amos:

Your request for an official opinion from this office, dated March 17, 1969, is as follows:

"On page 15 of the forms and procedures booklet for filing under the UCC, the following is written:

"'If a Standard Financing Statement (Form UCC-1) is used for the amendment the form should be completely executed, and should contain the following recital on its face, "This financing statement amends financing statement number ——, filed —— (date), naming the above debtor(s) and secured party(ies)," **The name and signature o fthe debtor and the name and signature of the secured party on the amendment must be identical to the names and signatures of the debtor and secured party on the original financing statement.'** (Emphasis supplied.)

"Does this mean that an amendment must be signed by the original debtor who signed the financing statement?

> "We have received an amendment, UCC-3, a copy of which is attached. The name of the debtor on the financing statement is Robert W. Tays, d/b/a Grisham & Tays Plumbing Company. The amendment is seeking to change the name to: Tays Furniture Co., and is signed by R. W. Tays, Owner, Tays Furniture Company. Can we accept this? Or will the amendment have to be signed: 'Grisham & Tays Plumbing Co., by Robert W. Tays?' "

The original Financing Statement (UCC-1) attached to your request designates Robert W. Tays, d/b/a Grisham and Tays Plumbing Company, Route 1, Killen, Alabama, as the debtor and Fedders Financial Corporation, Edison, New Jersey, as the secured party. The statement is signed "Robert W. Tays, d/b/a Grisham and Tays Plumbing Company by R. W. Tays, Owner," and "Fedders Financial Corporation" by an individual whose signature cannot be read as "Vice President".

The subsequent amendment (UCC-3) attached to your request designates Robert W. Tays, d/b/a Grisham and Tays Plumbing Company, Route 1, Killen, Alabama as debtor, and Fedders Financial Corporation, Edison, New Jersey, as the secured party. Line 8 is checked with an "x" to indicate that the instrument is intended as an amendment. Line 10 sets forth a description of such amendment, as follows:

> "Change in Trade Name: Tays Furniture Company, Killen, Alabama"

This form is signed "Tays Furniture Company by: R. W. Tays, Owner" and "Fedders Financial Corporation" by the same individual whose signature cannot be read as "President."

You have quoted a statement which appears on page 15 of the Forms and Procedures Pamphlet prepared in your office as a guide for filing under the Uniform Commercial Code. This statement requires that the name and signature of the debtor and the name and signature of the secured party on the amendment must be identical to the names and signatures of the debtor and secured party on the original Financing Statement. In view of such statement, you have requested the opinion of this office as to whether the attached amendment (UCC-3) must be signed by the same debtor who signed the original Financing Statement (UCC-1).

While it is certainly true in most instances that the same parties who signed an original Financing Statement must also sign any amendment thereto, the situation presented in your request is a distinct exception to this general rule. The entire purpose of filing the amendment in this case was to change the trade name of the business which the individual debtor had been operating. It can be assumed from the documents before us that Mr. Tays has changed his business from plumbing to furniture. This change has been clearly indicated on lines 8 and 10 of the attached amendment (UCC-3).

It would logically follow, then, that in signing such amendment Mr. Tays would sign his name under the new and changed trade name as

indicated in the amendment. Section 9-402(4), Uniform Commercial Code, states that a Financing Statement means the original Financing Statement and any amendments—which has been interpreted by this office to mean that an amendment must comply with all of the minimum legal requirements as required for an original Financing Statement under the other provisions of Section 9-402, supra.

Since the amendment here in question contains the signatures of both the debtor and the secured party, as well as all the other pertinent information required under Section 9-402, supra, it is our opinion that it meets minimum legal requirements of such section and is therefore acceptable for filing purposes upon payment of the required fee.

From the conclusion reached above, it is obvious that the statement previously quoted on page 15 of the pamphlet, issued by your office on Forms and Procedures for Filing under the Uniform Commercial Code, does not apply in this instance, and, while it may be generally treated as being correct, it should be disregarded by you under the facts presented in this request.

Very truly yours,
MacDONALD GALLION
Attorney General

April 22, 1969

Honorable Floyd H. Mann
Director
Department of Public Safety
State of Alabama
Montgomery, Alabama

Employment, Employers and Employees — Licenses — Municipalities — Public Safety Department — Taxes.

1. The ordinance of the City of Opelika which imposes a license on all salaried or wage-earning employees within the City does not apply to State Troopers.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office dated March 5, 1969 is as follows:

"Attached is a copy of Ordinance #101-69 of the City of Opelika, and a copy of the Rules and Regulations of that city for administration of the ordinance.

"Briefly, the ordinance purports to level a salary tax upon certain persons 'doing any kind of work or rendering any kind

of personal service for others **in** the City of Opelika, Alabama where the relationship between the individual performing the services and the person for whom the service is rendered is, as to those services, the legal relationship of employer and employee' (the emphasis is supplied). In addition Section 4 of the Ordinance imposes the tax on governmental officials where 'the services of such official or employee are rendered **within** the City . . . '

"As you know, our troopers are assigned to traffic patrol and criminal investigation in the rural areas of the state, or are assigned to driver license examination duty at or near the various courthouses. However, they are each and every one employed in Montgomery, are paid from Montgomery, report to Montgomery and are only incidentally at other locations.

"Please give us your opinion as to whether or not the purported tax by the city of Opelika is collectible from or due by a trooper of the Alabama Department of Public Safety assigned to duty in the Opelika area."

The ordinance of the City of Opelika, here considered, is similar to the municipal ordinance considered by the Supreme Court of Alabama in the case of **Estes, et al. vs. City of Gadsden, et al.**, 266 Ala. 166, 94 So. 2d 744. In said case the court held that Title 37, Section 735, Code of Alabama 1940, Recompiled 1958, authorizes a municipality to impose an annual license fee on all salaried or wage-earning employees within the municipality for work performed within its corporate limits.

The ordinance of the City of Opelika levies a tax upon each employee in the amount of one percent of his gross salary or gross compenstation received for his services within the City as an employee.

The question then to be answered is whether or not State Troopers are performing any services within the City limits of Opelika, Alabama within the meaning of said ordinance.

You stated in your letter that Troopers are assigned to the rural areas of the State, and further that each one is employed to work out of Montgomery, paid from Montgomery, reports to Montgomery and is at other locations only temporarily and incidentally to his employment in Montgomery.

Therefore, applying the facts to the requirement of the ordinance that services be rendered in the City limits of Opelika, Alabama, I must hold that no services by State Troopers are performed in the City of Opelika within the meaning of the said ordinance. Consequently, I would conclude that State Troopers are not liable for the license imposed by said ordinance of said City.

Very truly yours,
MacDONALD GALLION
Attorney General

April 24, 1969

Honorable W. L. Woodham
Judge of Probate
Henry County
Abbeville, Alabama

Counties — Expenditures — Highway Funds — Constitution 1901, Amendment No. 93.
County governing body can appropriate and expend only for the purposes specifically authorized by law. May provide for purchase of tractor for fire prevention in forest preservation from funds not earmarked or pledged. No authority to use highway funds for other than road purposes. Title 12, Section 12, Code of Alabama 1940, Recompiled 1958, as amended; Act No. 50, 1st Ex. Sess. 1959 Legislature, approved February 24, 1959.

Opinion by Assistant Attorney General Lurie.

Dear Sir:

Your request for an opinion of this office dated April 7, 1969, is as follows:

"The Forestry Industry of Henry County, Alabama is one of the largest and most valuable industries in the county's economy. Also, it is the county's largest employee and greatest user of the highway of the county. This industry, including the landowners, lessors, pulpwood and saw-timber operators are in desperate need of more efficient fire protection and particularly a new modern tractor designed for such forestry work. The funds available to the Forestry Department for the purchase of such equipment is inadequate and representatives of the landowners, lessees and operators have requested the assistance from the county in the purchasing of such equipment which would be turned over to the State Forestry Department for its use in the county. The county appropriation would amount to between $5,000.00 and $10,000.00.

"The question is can the County Court of Commissioners make an appropriation for this purpose out of the Highway and Traffic Fund or any other fund of the county, except the General Fund? We will appreciate your usual good and prompt attention to this request, as there is a critical need in the county for fire protective measures as indicated above."

Your question, for purposes of clarification, is divided into two parts:

(1) Can the Court of County Commissioners of Henry County expend funds for the purchase of machinery (tractor) for use in the protection of your forests from fire?

(2) What county funds may be expended for such purchases?

The answer to No. 1 is in the affirmative and has been determined by this office on several occasions. Opinions to Honorable Brooks Toler, Division of Forestry, Montgomery, Alabama, dated June 28, 1939, and published in Quarterly Report of Attorney General, Volume 15, page 341, and to Honorable Reo Kirkland, Probate Judge, Brewton, Alabama, dated May 4, 1954, and published in Quarterly Report of Attorney General, Volume 75, page 28, clearly express this conclusion. A copy of these opinions is attached for your information and convenience.

The answer to query No. 2 is not so clear and concise. It is necessary to consider Amendment No. 93 to the Alabama Constitution of 1901 and Act No. 50, First Extra Session 1959 Legislature, approved February 24, 1959. These provisions are as follows:

> Amend. 93. — "No moneys derived from any fees, excises, or license taxes, levied by the state, relating to registration, operation, or use of vehicles upon the public highways except a vehicle-use tax imposed in lieu of a sales tax, and no moneys derived from any fee, excises, or license taxes, levied by the state, relating to fuels used for propelling such vehicles except pump taxes, shall be expended for other than cost of administering such laws, statutory refunds and adjustments allowed therein, cost of construction, reconstruction, maintenance and repair of public highways and bridges, costs of highway rights-of-way, payment of highway obligations, the cost of traffic regulation, and the expense of enforcing state traffic and motor vehicle laws. The provisions of this amendment shall not apply to any such fees, excises, or license taxes now levied by the state for school purposes for the whole state or for any county or city board of education therein."
>
> Act No. 50, 1st Ex. Sess. 1959 Legislature: "Section 1. The several counties of the State are hereby authorized to expend the funds derived from fees, excises, or license taxes, levied by the State, relating to the registration, operation, or use of motor vehicles upon the public highways, and also the money derived from any fees, excises, or license taxes, levied by the State, relating to fuels used for propelling such vehicles, for the cost of constructing, reconstructing, maintaining, and repairing of public roads and bridges."

These provisions of law set out a definite use for funds derived from taxes, licenses or other revenue produced by levy on fuels and vehicles in use on the highways of the state. However, it has been ruled that such restriction on the use of these taxes does not relate to levies imposed on local governments (In Re Opinion of Justices, 266 Ala. 363, 96 So. 2d. 634). Thus, if Henry County has a local gasoline tax, the revenue produced therefrom, if not otherwise pledged, may be used for whatever the county or governing body may determine so long as that use comes within the provisions of Title 12, Section 12,

Code of Alabama 1940, Recompiled 1958, as amended. This section is a recitation of authority of county governing bodies and is restricting as to the expenditure of county funds. Any appropriation or expenditure of county funds must rely on express authority therefor in the statutes. This office in an opinion to Honorable Thomas A. Peavey, Probate Judge, Escambia County in 1944 (Quarterly Report of Attorney General, Volume 36, page 71) stated the following principle of construction which governs such matters:

> "The Board of Revenue of Escambia County has only such authority as has been expressly given to it by the Constitution or the statutes or such power and authority as may be necessarily implied from the express power granted. **Rhodes v. Marengo County,** 204 Ala. 667, 88 So. 850; **State ex rel. Chilton County v. Butler,** 225 Ala. 191, 142 So. 531; **State ex rel. Tallapoosa County v. Butler,** 227 Ala. 212, 149 So. 260; **Corning v. Patton,** 236 Ala. 354, 182 So. 39, 14 Am. Juris. p. 200, Section 28; 20 C.J.S. pp. 801-803, Section 49."

Therefore, the appropriation by Henry County of funds for purchase of the machinery for forest fire prevention from the **'Highway and Traffic Fund'** would be unauthorized unless such proposed use of the equipment would be in furtherance of the road program, or be paid from funds derived from a local levy as hereinabove stated.

Yours very truly,
MacDONALD GALLION
ATTORNEY GENERAL

April 30, 1969

Honorable Hugh H. Williamson
Superintendent
County Board of Education
St. Clair County
Pell City, Alabama

Schools — Five Mill Ad Valorem Tax.

A county may levy a five mill ad valorem tax for school purposes under the provisions of Amendment 202 to the Constitution regardless of the fact that the county is now levying a five mill tax under another constitutional amendment.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of April 4, 1969, is as follows:

"I am seeking your opinion as to whether the five mill ad valorem tax authorized by constitutional amendment passed by the Legislature during the regular session of 1961 and subsequently approved by the voters in a state wide referendum would enable the St. Clair County Board of Education to petition the Court of County Commissioners to call for a referendum for an additional five mill ad valorem tax in St. Clair County.

The reason for my seeking your opinion on this question is that some doubt exists as to whether this amendment allows those counties who had special legislation prior to 1961 allowing them to levy a special five mill tax can now levy another 5 mill tax which would total 10 mills in addition to the regular 7 mills.

"We are at the present time collecting the normal 3 mill district tax, the 1 and 3 mill county wide taxes and the special 5 mill county wide tax for a total of 12 mills.

"Thank you sincerely for your opinion in this matter."

My answer to your inquiry is in the affirmative.

The Constitutional Amendment to which you refer is Amendment No. 202, Constitution of Alabama 1901. It authorizes the county governing bodies to levy a special county-wide five mill ad valorem tax for school purposes. The amendment specifically provides that the tax thereby authorized shall be in addition to all other taxes now or hereafter authorized by the Constitution and laws of Alabama.

The special five mill ad valorem tax which your county is now levying and collecting was authorized by Amendment No. 77 to the Constitution of Alabama 1901. This amendment was a special amendment applicable only to St. Clair County authorizing the levying of a special five mill school tax, and is separate and apart from Amendment No. 202.

You are, therefore, advised that if an election is called under the provisions of Amendment 202 of the Constitution, and the voters approve the tax at that election, in that event, the county governing body will be authorized to levy an additional five mill school tax regardless of the tax levied under Amendment No. 77, supra; thereby making the total millage tax of your county seventeen mills.

Yours very truly,
MacDONALD GALLION
Attorney General

May 9, 1969

Honorable Richard E. McPhearson
Judge of Probate
Choctaw County Courthouse
Butler, Alabama

Motor vehicles — Truck License Tags — Credits.

1. Under the Motor Vehicle License Tax Laws, and particularly Subsection (c) of Section 697, Title 51, Code of Alabama 1940, Recompiled 1958, as that Section was amended by Act No. 223 of the Special Session and Act No. 580 of the Regular Session, Alabama Legislature of 1967, no credit can be given for the amount paid for a regular truck license under Subsection (a) of Section 697. as amended, supra, where the owner converts a truck into a "for-hire" or a leased truck, requiring the higher license under Subsection (b) of the same Section, during the same license year, even though the owner makes application for the higher license under Subsection (b) before he uses the truck for hire or leases the truck. There is no provision under the Motor Vehicle License Tax Laws of this State which would authorize such credit to be given.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion from this office bearing date of March 17, 1969, is as follows:

"I would like to have an Attorney General's opinion, as there seems to be some confusion between our office and the Revenue Department as to how the following situation should be or could be handled.

"Our question is an owner of a truck purchased a 73P tag prior to November 15, 1968 this being the maximum weight that can be purchased for a regular truck tag.

In January of this year the owner of this 73P tag came to the Probate Office and stated that he wanted to purchase the maximum For Hire tag for this truck. Our question is can he be allowed credit for his 73P tag turned in during the year or exchanged for a For Hire truck tag during the year?

"We are aware of Title 51, Section 697 (c) which allows a person to come in during the year and increase his weight classification tag and receive credit if he does this voluntarily. We find, no provisions, however, for allowing him to change or receive credit for a maximum For Hire tag when he has purchased a maximum or 73P tag. (This office did not allow any credit for this tag.)

"It seems that this question has been clearly answered by Attorney General's Opinion Volume 111, page 84 dated June 17, 1963 addressed to the Honorable Phillip J. Hamm under Section 5 of that opinion, which clearly states that no credit can be given under Act No. 672 for a regular truck tag pur-

chased under Section 697. This opinion was written by Assistant Attorney General Burton.

"I thank you for any clarification you can give me on this matter."

The provisions of Subsection (c) of Section 697 of Title 51, as said Section was amended by Act No. 223 of the Special Session of 1967, and Act No. 580 of the Regular Session of 1967, reads practically the same in all material respect, insofar as the question presented here is concerned, as the provisions of Subsection (c) of Section 1 of Act No. 672 of the 1961 Regular Session of the Alabama Legislature. Act No. 672, supra, in 1967 was repealed in its entirety and superceded by Acts Nos. 223 and 580, supra, but what were the provisions of Section 1(c) of Act No. 672 have been carried forward practically without any material change into Section 697 of Title 51, as that Section was amended in 1967 by said Acts 223 and 580.

In answering in effect the same question which is now being asked by you, but which was then propounded in relationship to the provisions of Subsection (c) of Section 1 of Act No. 672, supra, this office in an official opinion dated June 17, 1963, and addressed to the then Commissioner of Revenue for Alabama, and which is reported in Quarterly Report of the Attorney General, Volume 111, page 84 (at pages 90-92, incl.), answered such inquiry as follows:

"Act No. 672, Section 1(c), supra, provides as follows:

" 'The owner of a motor truck or truck-tractor operated for hire may voluntarily increase the allowable gross weight for which his vehicle is licensed by purchasing the license hereinabove prescribed for the appropriate weight classification and paying the difference in fees between the license which is surrendered and that for the higher weight classification desired. The license classification may not be decreased for a vehicle, however, except once a year at the time new license tags or plates are purchased for such vehicle. If upon inspection any vehicle licensed hereunder is found to weigh more than is permitted by the license plates which it carries (regardless of whether such weight is below the legal maximum permitted for other than licensing purposes), the owner of such vehicle shall purchase immediately a new license for the weight of the vehicle as inspected. In such an event no credit shall be allowed for the surrendered under-rated license plates or tags, and the owner of the vehicle shall be subject to the penalty prescribed by law for using a motor vehicle with an improper license.'

"The above quoted provisions of Act No. 672, supra, do not provide for credit to be given for the regular truck tags when a regular truck, licensed under the schedules provided in Section 697, supra, is converted by its owner into a 'for-hire' truck

under the schedules contained in Act No. 672. **The credit provided for in said Act is permissible only where the owner voluntarily increases the allowable gross weight of a truck which has already been licensed for a 'for-hire' truck under Act No. 672 during the license year, and where a higher 'for-hire' truck license is later required under the schedules provided for in Act No. 672.**

"The foregoing being considered, **there is no provision in Act No. 672, supra, or otherwise that can be found in the motor vehicle license tax laws which would authorize the owner of a truck who has purchased the regular truck tag under Section 697, supra, to receive a credit for the amount paid for such tag on the price of a 'for-hire' tag, where he converts the truck to a 'for-hire' truck during the same license tax year.** This would also be true even though the owner makes application for the 'for-hire' tag before he converts the truck or uses it on the highways to haul for hire." (Emphasis Supplied.)

There has been no material change made in this respect in the applicable provisions of the Motor Vehicle License Tax Laws since said opinion of this office was released on June 17, 1963. Due then to the similarity between the provisions of Subsection (c) of Section 1 of Act No. 672, supra, and the present law, namely, Subsection (c) of Section 697, as amended in 1967, Title 51, supra, and the fact that there has not been any material change made, it appears that your question has already been answered in the negative and to the effect that such credit cannot be allowed under the present provisions of the Motor Vehicle License Tax Laws. That is also my conclusion here.

Very truly yours,
MacDONALD GALLION
Attorney General

May 23, 1969

Honorable J. Paul Meeks
Judge of Probate
Probate Court of Jefferson County
110 Courthouse
Birmingham, Alabama 35203

Corporations — Judges of Probate.
The amount of subscribed and paid in capital stock with which a corporation will begin business must in no case be less than $1,000.00 par value.

Opinion by Assistant Attorneys General Hart and Loeb.

Dear Judge Meeks:

Your request for an official opinion dated April 24, 1969 is as follows:

"Referring to the Alabama Business Incorporation Act (1959 Acts, page 1055 etc.; Title 10, Section 21(4) etc.) we have a certificate of incorporation presented for filing which provides for 10,000 shares of common stock of one cent ($.01) par value authorized capital stock.

"The subscription list shows that only ten shares have been subscribed for at a price of $100.00 per share.

"Under the Act of the Legislature hereinabove mentioned does this certificate comply with the provisions of Section 21(4) and the requirements for capital stock mentioned therein? Should the par value of stock actually subscribed for amount to a minimum of $1,000.00 par value?"

Your first question, " . . . does this certificate comply with the provisions of Section 21(4), and the requirements for capital stock mentioned therein?", is answered in the negative.

Your second question, "Should the par value of stock actually subscribed for amount to a minimum of $1,000.00 par value?", should be answered in the affirmative.

Title 10, Section 21(4), Code of Alabama 1940, as amended, states, in pertinent part, as follows:

"The certificate of incorporation . . . shall set forth:

* * *

"The total number of shares of stock which the corporation shall have authority to issue with a statement of the par value of each share or that such shares are without par value; the amount of capital stock with which it will begin business, which shall in no case be less than one thousand dollars; . . . "

Title 10, Section 21(5), Code of Alabama 1940, as amended, states, in pertinent part, as follows:

"The certificate of incorporation shall have attached to it a statement under oath by the person authorized by the incorporators to receive subscriptions to the capital stock, showing the amount of capital stock which has been paid in, which amount shall be at least twenty per cent of the stock subscribed for, and in no case less than one thousand dollars; . . . "

The Supreme Court of Alabama in **State v. DeKalb County Exchange,** 253 Ala. 217, 43 So. 2d 809, held as follows:

" ' * * * there is a well-understood distinction, universally recognized, between "the capital or property" of incorporated companies and "their capital stock". "The term 'capital' applied to corporations is often used interchangeably with 'capital stock, ' and both are frequently used to express the same

> thing — the property and assets of the corporation — **but this is improper.** The capital stock of a corporation is the amount subscribed and paid in by the shareholders, or secured to be paid in, and upon which it is to conduct its operations; and the amount of the capital stock remains the same, notwithstanding the gains or losses of the corporation. The term 'capital,' however properly means not the capital stock in this sense, but the actual property or estate of the corporation, whether in money or property." ' " [Emphasis supplied.]

For a similar holding, see **Commercial Fire Insurance Company v. Board of Revenue of Montgomery County,** 99 Ala. 1, 12 So. 275.

Title 10, Section 21(37), Code of Alabama 1940, as amended, states, in pertinent part, as follows:

"In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital **to the extent of the par value of such shares,** and the excess, if any, of such consideration shall constitute capital surplus." [Emphasis supplied.]

This conception of capital surplus as being that amount of paid in capital in excess of the par value of the shares subscribed for is further borne out by the following statement of the court in **Georgesearch, Inc. v. Morriss,** 193 F. Supp. 163, 177 (W.D. La. 1961):

> "Capital surplus is that sum which equals the difference between the total amount of cash received for all of the corporation's outstanding shares of stock and the par value of such shares."

The Federal District Court in **Allied Chemical and Dye Corp. v. McMahon,** 156 F. Supp. 275, 278 (S.D. N.Y. 1957), said that:

> " 'Capital,' in the sense of the original investment by the owners of a corporation, is usually shown in the capital stock account. According to the type of stock, this is the aggregate of the par value or the stated value or the actual value of the shares issued. This account remains unchanged except insofar as the stockholders contribute additional funds to the corporation or withdraw their original investment from it. The fluctuation in the value of the business is not shown by a change in this account but rather by the fluctuations of the surplus account."

In line with the above authorities, a New York appellate court, in **Randall v. Bailey,** 23 N.Y.S. 2d 173, held, as follows:

> "Those statements by our highest court seem to me to make it entirely plain that the terms capital and capital stock in these statutes mean an amount, i.e., a value, of property up to the limit of the number of dollars specified as the par value of paid-up issued shares . . ., and that when the amount, i.e.,

> the value, of the company's property exceeds that number of dollars the excess, whether 'contributed by the stockholders or otherwise obtained' is surplus or surplus profits . . . ."

In the light of Title 10, Section 21(37), supra, and the other, authorities quoted above, it is my conclusion that the "amount of capital stock" referred to in Title 10, Section 21(4), supra, when construed in pari materia with Title 10, Section 21(5), supra, means the par value of capital stock subscribed for and paid into the corporation. Such par value can be no less than $1,000.00.

Under the facts presented in your inquiry, the certificate of incorporation authorized 10,000 shares of common stock at a par value of one cent ($.01) per share. Even if all of the authorized capital stock of 10,000 shares were subscribed and paid in, the par value of such shares would amount to only $100.00. Under no circumstances could the charter in question comply with the provisions of Title 10, Section 21(4), Code of Alabama 1940, as amended.

Yours very truly,
MacDONALD GALLION
Attorney General

May 28, 1969

Honorable Ralph W. Havard
Tax Collector
Mobile County
Mobile, Alabama 36602

Tax Collectors — Taxation — Ad Valorem Taxes — Tax Sales.

Questions discussed generally relative to sales of personal property for delinquent ad valorem taxes, where said property is subject to conditional sales contracts or similar agreements.

Opinion by Assistant Attorney General Payne.

Dear Sir:

Your request for an official opinion dated May 13, 1969, reads as follows:

> "There was a corporation formed in Mobile County called Strucco, Inc. Their functions dealt with the construction of residences. They returned assessments for the 1968 and 1969 tax years. This firm failed in business and has, therefore, not paid taxes for either of these years. On April 22, 1969, I, as Tax Collector for Mobile County, levied against the personal property of this corporation, setting the date of sale as May 5, 1969.

"Scott Company, Inc., Mobile, Alabama, had sold to Strucco, Inc. a towmotor on a lease-purchase arrangement. They obtained a detinue from Circuit Court to recover this piece of equipment. After Scott paid taxes on this piece of equipment, which was calculated as to the value of same in the aggregate assessment, it was released to Scott (Biennial Report of the Attorney General 1928-1930, page 115, letter dated 1-19-28).

"It was then necessary for the Tax Collector to continue the date of sale of personal property of Strucco, Inc. until May 19, 1969.

"On May 5th, the Sheriff of Mobile County, acting on a detinue obtained by attorneys for Hydro-Air Engineering, Inc., disregarded the Tax Collector's levy and removed from the premises of Strucco equipment Hydro-Air Engineering, Inc., had sold to Strucco on a conditional sales contract. No taxes were paid by Hydro-Air. They did, however, post bond when obtaining the detinue writ from Circuit Court.

"I would like your opinion on the following questions:

"1. Does the Sheriff acting on a detinue have the authority to remove from the premises personal property that has been levied on by the Tax Collector, even though bond has been posted by the plaintiff?

"2. By his levy, would the Tax Collector take possession of the personal property of the taxpayer?

"3. What title is transferred by the Tax Collector to the purchaser at the tax sale?

"4. When an assessment of personal property is made by a corporation, is this lien against the members of the corporation, or against the personal property assessed by the corporation?
"5. In the event the corporation fails, can the Tax Collector proceed against the personal property assessed by the corporation to satisfy the tax lien (some of this property was being bought by the corporation on a conditional sales contract, some on a lease-purchase arrangement, and some on open account)?
"6. If personal property changes ownership during the tax year, who is liable for the taxes?

"7. If personal property is sold by the Tax Collector after posting levy in three public places for at least 10 days and receiving a writ of fieri facias from the Probate Judge, and it develops that someone has a mortgage on this property, could any action be taken against the Tax Collector for holding this sale?"

Since receiving your request I have talked with you over the telephone about certain aspects of your letter. You advise me that all

taxes involved have now been paid by the landlord of Strucco, Inc., the alleged taxpayer in this case. You advise that for future reference you would like an answer to the questions set out in your letter of request; however, you have agreed to withdraw your question numbered 1 dealing with the Sheriff acting on a writ of detinue as this would serve no good purpose at this time.

As to your second question, it is necessary that the Tax Collector adhere strictly to the substantial requisites of the law in order to have a valid tax sale involving delinquent ad valorem taxes. **Lane v. Roma Lumber Co.,** 234 Ala. 551, 176 So. 283. Consequently, the collector is bound to follow the requirements provided in Section 201, Title 51, Code of Alabama 1940, Recompiled 1958, in order to effectively conduct a valid tax sale of personal property. You advise me that in this regard you visited the premises where the personal property to be sold was located; that you made an **inventory** of all the corporation's personal property, whether being purchased on a conditional sales contract or other similar basis, and included in said inventory such items as "lumber." The proper ten days notice of sale was given on April 22, 1969, which notice set out in detail the various parcels of personal property and stated that same would be sold as ordered by the Judge of Probate at a certain date and time at public outcry. I think this is a substantial compliance with the law and your action in this regard, to me, would suffice as having constructive possession of the property. See Quarterly Report of the Attorney General, Vol. 60, page 26.

Your third question refers to what title is transferred by the Tax Collector to a purchaser at the tax sale. The only title conveyed at such sale is that which is owned by the taxpayer, if any, or any interest he may have in the property—nothing more. In writing to the question of title to property purchased at a tax sale, the Alabama Supreme Court has held that the rule of caveat emptor applies "with all its vigor in such cases. He buys a title without warranty." **Fields v. Altman, et al.,** 193 Ala. 160, 69 So. 543.

The fourth question is answered in this manner: A corporation is an entity separate and distinct from its stockholders and members. The lien attaches to the personal property assessed by the corporation—the members of the corporation do not own the corporate capital or property, they own **shares** of capital stock of the corporation. Cf. **State v. DeKalb County Exchange, Inc.,** 43 So. 2d 809.

Your fifth question pertains as to whether you may proceed to satisfy the tax lien out of personal property assessed by the corporation, where the corporation has failed, although some of the property is bought on a conditional sales contract or other similar purchase agreement. This question is answered in the affirmative. It is an established doctrine in this state where the vendee in a conditional sales contract (title being retained by the vendor) is the **general and beneficial owner** of the property that he (vendee) is liable to be taxed ad valorem for the property; the vendor cannot be so taxed. **Ex parte**

State, State v. White Furniture Co., 206 Ala. 575, 90 So. 896; **State v. Seals Piano Co.,** 209 Ala. 93, 95 So. 451. See also Section 203, Title 51, supra.

Your sixth question pertains to the liability for taxes during the tax year of personal property where there has been a change of ownership during the year. Whoever owns property on October 1, of any given year is the taxable owner and is personally liable for the year's taxes. Should the property be conveyed by the owner subsequent to October 1, "he does not thereby escape his personal liability to the state, nor does his grantee ipso facto incur a personal liability, although the taxes are a charge in rem; but, if such grantee voluntarily assess the property to himself, he thereby assumes and incurs a personal liability for the taxes." **Bains Bros. Inv. Co. v. Purdie,** 180 Ala. 333, 60 So. 920.

In your seventh question, you wish to know if personal property is sold by the Tax Collector and it subsequently develops that there is a mortgage on the property, could any action be taken against the Tax Collector for holding this sale. I take it, that you mean could there be any successful action taken against you under the circumstances stated. This question is answered in the negative. Section 884, Title 51, supra, makes the lien of the county and state superior to all other liens. This includes subsequent as well as prior encumbrancers. See **United States v. State of Alabama,** 313 U.S. 274, 61 S.Ct. 1011, 85 L.Ed. 1327.

In our conversation you informed me that your seventh question was prompted by the fact that your office has been seeking or attempting to ascertain whether or not there are mortgages or other encumbrances on the property that is to be sold for delinquent taxes. This effort, so you advised, sometimes leads to undesirable results such as is evidenced by the facts as set out in your letter. I hope that this will be of some aid to you in this respect.

Very truly yours,
MacDONALD GALLION
Attorney General

May 30, 1969

Honorable Charles R. Adair, Jr.
County Attorney
Tallapoosa County
Dadeville, Alabama 36853

Counties — Courts of County Commissioners — Tallapoosa County — Health and Health Department — Appropriations.

A Court of County Commissioners may appropriate funds from the general fund for the purchase of a compacter

garbage truck, install garbage collection boxes over the county, employ personnel to operate the loader and maintain sanitary land fills, provide garbage service for residents of the county who use the boxes so provided or provided by themselves, and enter into contracts with municipalities in the county to use the land fills, provided the appropriate health officials and Court of County Commissioners determine that the establishment and maintenance of such sanitary land fills is in the interest of public health in the county.

Opinion by Assistant Attorney General Hall.

Dear Sir:

Your request for an official opinion bearing date of May 22, 1969, is as follows:

> "The Court of County Commissioners of Tallapoosa County, Alabama has asked me to request of you an answer to the following:
>
> "Tallapoosa County has within its borders some six incorporated municipalities. In addition, there is a large and growing group of residences around Lake Martin. Each of these presents a solid waste or garbage problem.
>
> "It is the proposal of the Court to establish one or more sanitary land fills in the County. The municipalities would be allowed to contract with the County to use these land fills. In addition, the County would purchase a compacter garbage truck, install garbage collection boxes over the County with particular emphasis on the roads giving access to Lake Martin, employ personnel to operate the loader and maintain the fills and provide a garbage service for those living outside the corporate limits who use the boxes so provided. In addition, garbage would be picked up in areas where families group together and provide boxes suitable for use with the proposed truck.
>
> "The Court would like to know if it may use moneys from the general funds of the County to provide this equipment, personnel and maintain the land fills."

Title 12, Section 12, Subsection 19, Code of Alabama 1940 (Recompiled 1958), provides that the Court of County Commissioners has authority "to appropriate money to promote or enforce the health and quarantine laws of the State for the benefit of the county and its inhabitants, when requested so to do by the state board of health."

Title 12, Section 12, Subsection 22, Code of Alabama 1940 (Recompiled 1958), provides that the Court of County Commissioners has authority "to set aside, appropriate and use county funds or revenues

for the purpose of developing, advertising and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties. The court is authorized to enter into contracts with any person, firm, corporation, or association to carry out the purposes set forth in this subdivision."

Title 22, Section 7, Code of Alabama 1940 (Recompiled 1958), provides, in part, as follows:

> "The state board of health shall have authority and jurisdiction: . . . (6) to adopt and promulgate rules and regulations providing proper methods and details for administering the health and quarantine laws of the state, which rules and regulations shall have the force and effect of law and shall be executed and enforced by the same courts, bodies, officials, agents, and employees as in the case of health laws, ... "

Title 22, Section 8, Code of Alabama 1940 (Recompiled 1958), provides, in part, as follows:

> "It shall be the duty of the county boards of health in their respective counties and subject to the supervision and control of the state board of health: (1) to supervise the enforcement of the health laws of the state, including all ordinances or rules and regulations of municipalities or of county boards of health or of the state board of health; and to supervise the enforcement of the law for the collection of vital and mortuary statistics, and to adopt and promulgate, if necessary, rules and regulations for administering the health laws of the state and the rules and regulations of the state board of health, which rules and regulations of the county boards of health shall have the force and effect of law and shall be executed and enforced by the same bodies, officials, agents, and employees as in the case of health laws . . . . "

In an opinion reported in Quarterly Report of Attorney General, Volume 46, Page 118, it was held that the Court of County Commissioners or other governing body of a county is authorized to purchase a power spraying machine to be used in spraying cattle and other livestock to destroy flies, lice, cattle grubs, etc.

In an opinion reported in Quarterly Report of Attorney General, Volume 47, Page 63, it was held that the Court of County Commissioners of Coosa County could legally enter into a contract with the Town of Rockford to acquire or construct a waterworks system to serve both the county and town.

In an opinion reported in Biennial Report of Attorney General, 1936-38, Page 682, it was held that a Court of County Commissioners may appropriate proceeds from sales tax funds or the County's share

of Alabama Beverage Control Act receipts to the General Fund for the eradication of Bang's Disease, provided the health officials and the Court of County Commissioners deem such appropriation to be a public health measure.

Based on these considerations, it is my opinion that if the appropriate health officials and Court of County Commissioners determine that the establishment and maintenance of sanitary land fills is in the interest of public health in Tallapoosa County, Alabama, the Court of County Commissioners may appropriate funds from the general fund for the purchase of a compacter garbage truck, install garbage collection boxes over the county, employ personnel to operate the loader and maintain the fills, provide garbage service for residents of the county who use the boxes so provided or provided by themselves, and to enter into contracts with the municipalities of the county to use the land fills.

Very truly yours,
MacDONALD GALLION
Attorney General

June 6, 1969

Honorable Harvey L. Rabren
Commissioner of Revenue
State of Alabama
Montgomery, Alabama

Motor Vehicles — Truck License Tags — Transfers.

1. When Act No. 672 of the 1961 Regular Session, relating to the registration of trucks, etc. operated for hire, was expressly repealed by Act No. 223 of the Special Session of 1967 as well as all laws or portions of laws in conflict therewith, this served to also repeal the exception contained in Title 51, Section 706(b), as amended, Code of Alabama 1940, Recompiled 1958, insofar as the exception authorized the transfer of certain specified license tags from one motor truck "operated for hire and licensed under the provisions of Act No. 672," supra to another such truck.

2. There is now no provision of law in this State which would authorize or permit the transfer of a license tag from a truck operated for hire to another motor vehicle, except in the case of a replacement vehicle and where the licensed truck has been totally destroyed or where it has been completely junked as is provided under Title 51, Section 709, Code of Alabama 1940, Recompiled 1958.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion dated May 2, 1969, is as follows:

"Attached hereto is a letter from the Judge of Probate of Pickens County concerning the interpretation of laws covering the transfer of certain motor vehicle license plates.

"Inasmuch as this problem has been the source of much confusion and possible misinterpretation among all the licensing officials of this State, I will greatly appreciate your official opinion on the questions posed in the letter."

The letter to Mr. Henry P. Draughon, Chief, License Tax Division, dated April 25, 1969, from the Honorable Robert H. Kirksey, Judge of Probate of Pickens County, Alabama, and to which you make reference is also quoted as follows:

"We would appreciate your reply to the following question:

"Can 'For Hire' tags be transferred from one truck to another, and if so, which 'For Hire' tags would qualify?

"We understand that this is being done in some counties, and we would like your advice in writing so that we can have specific information on which to base this transfer.

"Our customer already has his new truck to which he wishes to transfer this 'For Hire' tag; therefore, we would appreciate a reply as soon as possible."

The first question presented by you and Judge Kirksey is answered in the negative. The only exception thereto would be where, as is contemplated by Title 51, Section 709, Code of Alabama 1940, Recompiled 1958, a truck has been "totally destroyed by fire, or totally wrecked, or completely junked" and a replacement vehicle is involved. As I read Judge Kirksey's request, that is not the situation here.

Actually, in making his inquiries, Judge Kirksey appears to be referring to Title 51, Section 706, as amended, Code of Alabama 1940, Recompiled 1958, and his questions seem to be addressed thereto, and particularly to the exception contained in subsection (b).

Insofar as truck license tags are concerned or it is relevant to your inquiry, Title 51, Section 706(b), as last amended, supra, forbids the transfer of motor vehicle license tags from one vehicle to another: **"Except that where a license tag costing in excess of one hundred dollars ($100.00) exclusive of any fees or penalties incurred in the issuance of such tag has been procured for a motor truck operated for hire and licensed under the provisions of Act No. 672, H. 479, approved September 8, 1961, [Secs. 69(1) and 697(2) of this Title] (Acts of Alabama, 1961, p. 921) . . . ."** (Emphasis supplied.)

Therefore, insofar as is material here, there is excepted from the prohibition of transferring license tags from one vehicle to another, **only trucks licensed as "for-hire" trucks under the provisions of Act No. 672 of the 1961 Regular Session, supra,** where the cost of the tag exceeds $100.00 exclusive of fees and any penalties incurred.

Effective October 1, 1967, and by Act No. 223 of the 1967 Special Session of the Legislature, Act No. 672 of the 1961 Regular Session, and said Act as amended and which related exclusively to the registration of trucks, etc., operated "for-hire," **was expressly repealed in its entirety.** Moreover, under Act No. 223 of the 1967 Special Session, supra, and Act No. 580 of the 1967 Regular Session, supra, Section 697 of Title 51, Code of Alabama 1940, Recompiled 1958, was amended to include the licensing of all "trucks," without designating any of the trucks by any special name or label such as "for-hire" trucks or the like.

Therefore, under Section 697, as amended in 1967, supra, trucks either fall in the private category licensed under the schedules provided in subsection (a), or under the higher schedules provided for trucks which are said to be used on the public highways for profit and which are provided for under subsection (b). See **National Motor Fleets, Inc. v. Brown** (Dec. July 25, 1968, Rehearing Den. August 22, 1968), 213 So.2d 570; also Quarterly Report of the Attorney General, Vol. 128, p. 64.

The foregoing being considered, Act No. 672 of the 1961 Regular Session was repealed outright and in its entirety, and there is now no special license tag "for a motor vehicle operated for hire and licensed under the provisions of Act No. 672," supra. Such trucks without being specifically designated as trucks operated for hire are now simply included under subsection (b) of Section 697, and the license schedules provided therein, as one of the types of trucks which are used on the highways for profit. **National Motor Fleets, Inc. v. Brown,** 213 So.2d 570, at pages 576 and 577; also see Quarterly Report of the Attorney General, Vol. 128, p. 64, **at p. 69.**

As Act No. 672 of the 1961 Regular Session, supra, has been expressly repealed, and as there is no longer a license issued thereunder on "a motor truck operated for hire," this also appears to have served to have repealed the exception contained in Section 706 of Title 51, as that section was amended by Act No. 296 of the Regular Session of the Legislature of 1967 (Acts 1967, Vol. 2, p. 766), and which exception has been quoted in part above, insofar as the exception relates to "motor trucks operated for hire and licensed under the provisions of Act No. 672," supra. This also seems particularly the case as Section 9 of Act No. 223 of the 1967 Special Session, supra, not only expressly repeals Act No. 672 of the 1961 Regular Session, supra, but it also expressly repeals "all laws or portions thereof in conflict with the provisions" of Act No. 223.

Under the circumstances, it appears that the exception as to trucks operated for hire and licensed under Act No. 672, supra, is no longer

operative. Thus, trucks operated for-hire, are now under the same provisions of the motor vehicle license laws as other trucks, and the license tags procured for same cannot be lawfully transferred to another vehicle, except under the provisions of Title 51, Section 709, supra, as have been outlined above, and which apply to replacement vehiclees, and where the trucks for which the license has been procured has been totally destroyed or completely junked.

Your second question is then answered to the effect that all so-called for-hire trucks regardless of the price of the tag or the license schedule under subsection (b) of Section 697, that such trucks might fall, would be subject to the same conditions as are hereinabove stated.

Yours very truly,
MacDONALD GALLION
Attorney General

June 12, 1969

Honorable Earl D. James
Mayor
City of Montgomery
Montgomery City Hall
Montgomery, Alabama

Municipalities—Public Records—Minimum Housing Code.

1. Detailed reports made by inspectors of their findings of alleged violations of the Minimum Housing Code of the City of Montgomery are public records, and as such are subject to examination by persons having a legitimate interest.

2. Orders and directives to vacate or repair issued under Minimum Housing Code of the City of Montgomery are public records, and as such are subject to examination by persons having a legitimate interest.

3. Replies from property owners or orders and directives which have been issued under the Minimum Housing Code of the City of Montgomery are public records, and as such are subject to examination by persons having a legitimate interest.

Opinion by Assistant Attorney General Morrow.

Dear Sir:

Your request for an opinion from this office bearing date of May 6, 1969 is as follows:

"The City of Montgomery is aware of the following citations:
"Your opinion to this City dated March 13, 1967
"Your opinion in your Reports of 1936-1938 at Page 780
"**Holcombe v State,** 200 So. 739

"Section 1 of Act Number 293, General Acts of 1945 at Page 486
"Title 41, Section 139 of the Code of Alabama recompiled in 1958
"**Holcombe, Sheriff v. State, ex rel. Chandler et al.,** 240 Ala. 590.
"In the light of these and other references your opinion is requested on certain questions concerning the following circumstances:

"The City of Montgomery has in force a Minimum Housing Code. In the course of enforcing this code, the Housing Code Director will normally have in his office a file concerning a particular piece of property and that file will contain three species of documents:

"1. The detailed reports made by inspectors of their findings of fact concerning alleged violations of the Housing Code in a particular structure;

"2. Orders and directives to vacate or repair the subject structure;

"3. Replies from the property owner to the Director while the particular case is being negotiated.

"The first two are made and inserted in the file in obedience to an existing ordinance. If the third item named is in the file at all, it will be because it was submitted voluntarily by the property owner.

"The replies may be written by the owner of the subject property or they may be merely memoranda of an inspector's understanding of an in-person or a telephone conversation he has had with the property owner.

"Are these three types of documents or any of them public records as the law defines such things in that they are open to to inspection by parties with a legitimate interest at reasonable hours?"

Title 37, Section 511(45), Code of Alabama 1940, Recompiled 1958, 1967 Cumulative Pocket Part, defines "public records" as follows:

" 'Public record' means all written, typed, or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers and employees of a municipality or municipal board in the transaction of public business, whether such business be of a legislative, judicial, quasi-judicial, or administrative character, and whether such business be trans-

acted in the performance of a governmental or proprietary function."

Title 41, Section 145, Code of Alabama 1940, Recompiled 1958, reads as follows:

"Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute."

A municipal ordinance is a "law" as referred to in Title 37, Section 511(45), supra. See Quarterly Report of the Attorney General, Volume 117, page 12.

After a careful reading of the citations cited in your letter of May 6, 1969, Title 37, Section 511(45), supra, and Title 41, Section 145, supra, we are of the opinion that the detailed reports of inspectors concerning violations of the Housing Code of the City of Montgomery and the orders and directives to vacate or repair, are public records within the limitations of the statutes and cases. The replies from property owners to which you refer are probably also public records in that they are a direct result of action taken by the City under the Minimum Housing Code.

The public generally have the right of a reasonable and free examination of public records required by law to be kept by public officials, except where the purpose is purely speculative or from idle curiosity, or unduly interfers or hinders the discharge of an officer's duty. **Holcombe v. State,** 240 Ala. 590, 200 So. 739.

Very truly yours,
MacDONALD GALLION
Attorney General

June 13, 1969

Honorable Harvey L. Rabren
Commissioner of Revenue
State of Alabama
Montgomery, Alabama

License Taxes—Directories, Compilation, Sale, etc.

1. The license tax levied on the compiling and selling of directories under Title 51, Section 509, Code of Alabama 1940, Recompiled 1958, is confined to directories covering "cities" and "towns," and where the license is procured for compiling, selling or offering for sale directories in a specific city or town it would cover the entire area comprising such city or town, and would preclude the collection of any other or further license under Section 509 as to communities or

other localities situated within the area or boundaries comprising the city or town for which the license has been paid. 2. Under Title 51, Section 131, Code of Alabama 1940, Recompiled 1958, the Legislature has given the State Department of Revenue complete supervision and control over the administration, enforcement and assessment of state and county license taxes, and its determinations are final in such matters, unless timely reviewed and overturned by a court of competent jurisdiction.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion dated May 14, 1969, is as follows:

"Recently examiners from the Department of Revenue audited R. L. Polk & Company, 431 Howard Street, Detroit, Michigan, and collected in excess of $10,000 delinquent and escape licenses under Title 51, Section 509. The money was distributed to the various counties for the issuance of the licenses as is customary in these matters. An amount of $4,932.48 was forwarded to Jefferson County covering business being conducted by R. L. Polk & Company for various cities and towns located in Jefferson County. Upon receipt of the above remittance, the Jefferson County Department of Revenue stated that it has always been their interpretation that this section was levied on companies doing business only in incorporated municipalities.

"In order that this matter may be clarified, I am requesting a formal ruling by the Attorney General's Office regarding the application of Section 509, Title 51, Code of Alabama 1940, Recompiled 1958."

Additional information secured from your License Tax Division is to the effect that the company referred to is compiling and selling only municipal directories; that is, directories which give the population of the municipality and the names and addresses of persons and concerns located therein.

Your first question concerns the application of the license under Section 509, supra, and in effect you ask to what extent this license is to be applied.

Your first question, therefore, is answered to the effect that said license under Section 509 would apply only where the directories are compiled, sold or offered for sale in "cities" or "towns." Moreover, where the license under Section 509 is procured for the compiling, selling or offering for sale of directories in a specific city or town it would encompass the entire area comprising such city or town, and the taxing authorities would be prohibited from collecting any other or further

license under Section 509 as to communities or other localities which are situated within the limits or boundaries of the city or town for which the license has been paid.

Title 51, Section 509, Code of Alabama 1940, Recompiled 1958, the statute levying this license, provides as follows:

> "Each person compiling, selling or offering for sale directories shall pay to the state license taxes as follows: For each city or town of one hundred thousand inhabitants or over, one hundred and fifty dollars; in cities or towns of fifty thousand and less than one hundred thousand inhabitants, seventy-five dollars; in cities or towns of twenty thousand and less than fifty thousand inhabitants, fifty dollars; in cities and towns of less than twenty thousand inhabitants, fifteen dollars; provided that this section shall not apply to directories issued by any person in connection with or as a part of a business for which business a general license tax is provided."

This office in construing Title 51, Section 509, supra, in an opinion dated November 14, 1944, and addressed to Honorable H. G. Dowling, the then Commissioner of Revenue of this State, and which is reported in Quarterly Report of the Attorney General, Volume 37, page 59, held that this license applies only where directories are compiled, sold, or offered for sale in cities or towns in this state. In that opinion this office concluded, after discussing at some length various rules of construction, as follows:

> "Upon application of these rules of construction, I am of opinion that Section 509, Title 51, supra, was intended to impose a license tax only upon persons compiling and selling or offering to sell so-called municipal directories **of cities and towns in the State of Alabama,** and that the amount of license is to be determined by the **population of the particular city or town** of which a directory is compiled and offered for sales." (Emphasis supplied.)

You also inquire, when certain parts of your letter are read with the postscript, as to whether the State Department of Revenue has the final authority to supervise and control the administration and enforcement of the state and county license tax laws. Your attention is called in this respect to the provisions of Title 51, Section 131, Code of Alabama 1940, Recompiled 1958, and especially the following very pertinent part of said Code Section, viz.:

> "It shall be the duty of the department of revenue, and it shall have the power and authority, in addition to the authority now in it vested by law. (a) To have and exercise general and **complete** supervision and control of the valuation, equalization and assessment of property, privilege, or franchise, and of the collection of all property, privilege, license, excise, intangible,

franchise or other taxes, **for the state and counties,** and of the enforcement of the tax laws of this state, and of the several county tax assessors, and county tax collectors, probate judges, and each and every county official, board or commission charged with any duty in the enforcement of the tax laws . . . ." (Emphasis Supplied.)

A careful analysis of Title 51, Section 131, supra, discloses a manifest intention on the part of the Legislature that the State Department of Revenue exercise general and **complete** supervision and control over the administration, enforcement and assessment of state and county license taxes, and that its determinations in such matters be final unless timely reviewed and overturned by a court of competent jurisdiction. The several commissioners of licenses and probate judges in this state and their employees, are bound by the legislative intent in this respect, the same as any of the other state or county officials or agents who are designated in the statute. **Ott v. Moody** (Decided November 7, 1968), 216 So.2d 177, at page 179. They are, therefore, under Section 131, supra, and the laws pertaining to license taxes, without authority to challenge the determination made by the State Department of Revenue in such matters. Your second question is answered accordingly.

Yours very truly,

MacDONALD GALLION
Attorney General

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INFORMAL OPINIONS

During the period covered by this Quarterly Report of the Attorney General, April 1, 1969 through June 30, 1969, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

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Board of Equalization—Payments	Woodrow J. Stephens	Jun. 10	135
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Inspectors—Hotels	David L. Thomas	Apr. 11	231
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Deposits—Transfer	Agnes Baggett	May 26	St. Treas.
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Elections—Tuscaloosa	J. Wagner Finnell	Apr. 17	149
Elections—Voters Lists	Richard L. Smith	May 14	260
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Board of Equalization—County Agriculture	W. E. Stone, Jr.	May 27	270
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Councilmen—Property	H. E. Holladay	Apr. 18	230
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County Attorneys—Expenses	A. W. Steineker	May 28	Ex. Accts.
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Sheriffs—Prisoners	A. Frank Lee	May 14	Bd. Corr.
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Parks—Property	Joe W. Graham	Apr. 11	Conserv.
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State Docks—Purchases	A. W. Steineker	Jun. 10	Ex. Accts.
State Treasury—Depositories	Agnes Baggett	May 13	St. Treas.
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